

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7063 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BRIJMOHAN RAMBHANSING RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 19th August, 1998, made by the Commissioner of Police. Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner has been served with the grounds of detention. It is alleged that the petitioner is a bootlegger and is dealing in country liquor. 7 offences for violation of prohibition law have been registered against the petitioner during the months of April to June 1998, three of the cases are pending trial, whereas rest of the four cases are pending investigation. In each of the cases, substantial quantity of country liquor has been found from the possession of the petitioner. Besides, two witnesses, whose identity has been withheld, have deposed in respect of the petitioner's bootlegging activities, and consequential breach of public order. Hence, the petitioner is held to be a 'bootlegger' and his activities are found to be prejudicial to the maintenance of public order.

The only ground on which the order of detention is challenged before me is that in four of the registered offences which were pending investigation, the concerned police had collected the samples of the country liquor recovered from the petitioner and had sent the said samples for examination by Public Analyst. However, the reports of such analysis, though vital to the defence of the detenu, have not been furnished to the petitioner.

The fact that such samples were collected, is born out from the concerned Panchnama. The Detaining Authority as well as the State Government have contested the petition and have filed their respective counter-affidavit. However, neither of the authorities has dealt with the specific contention raised by the petitioner. It is tried to be orally submitted that at the time of the order of detention, the reports of the Public Analyst were not yet received. Be that as it may, if that were the fact, it should have found place in the affidavit made by the concerned authorities. In absence of the specific denial or statement to that effect, it must be believed that the reports of the Public Analyst, though were available, were not furnished to the petitioner. It can not be gainsaid that such reports are vital documents and non-supply of the same has adversely affected the petitioner's right to make an effective representation. The petitioner's Constitutional right has, thus, been infringed, which should vitiate the continued detention of the petitioner.

The petition is, therefore, allowed. The impugned order dated 19th August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI*